

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROSA L. MORSE)	
Claimant)	
VS.)	
)	Docket No. 228,888
SUNSHINE BISCUITS, INC.)	
Respondent)	
AND)	
)	
TRANSPORTATION INSURANCE CO.)	
Insurance Carrier)	

ORDER

Claimant requests Appeals Board review of Administrative Law Judge Julie A. N. Sample's June 19, 2000, Award. The Appeals Board heard oral argument on December 8, 2000.

APPEARANCES

Philip R. Carson of Kansas City, Kansas, appeared on behalf of claimant. Donald J. Fritschie of Overland Park, Kansas, appeared on behalf of respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The ALJ found claimant suffered a neck injury at work on October 29, 1997. As a result of the injury, on December 18, 1997, claimant underwent a left C5-6 and C6-7 hemilaminectomy with foraminotomy and medial facetectomy. The ALJ awarded claimant a 10 percent permanent partial general disability based on permanent functional impairment. Claimant returned to work for respondent, therefore work disability was not an issue.

The respondent at all times denied claimant's workers compensation claim. Therefore, respondent has paid no benefits, including medical expenses for treatment of

claimant's neck injury. Claimant's private health insurance carrier paid all the medical expenses. In the Award, the ALJ ordered respondent to pay all reasonable and necessary medical expenses in accordance with the medical fee schedule.

On appeal, claimant requests the Appeals Board to review the ALJ's Award only as the Award relates to respondent's responsibility to pay the medical expenses incurred to treat claimant's October 29, 1997, work-related neck injury. The claimant contends the respondent should be ordered to pay directly to claimant the total cost of all of the medical treatment expenses. Those medical expenses totalled \$22,765.32. Although the medical expenses were paid by claimant's health insurance company, the claimant argues the respondent should be ordered to pay this total amount of medical expenses directly to the claimant.

Respondent, in its brief, contends the claimant failed to prove her neck injury and subsequent surgery resulted from an accidental injury that arose out of and in the course of claimant's employment. Respondent contends claimant's neck injury and subsequent surgery was not the result of an accident at work but is directly related to her preexisting degenerative disk disease and two previous automobile accidents. But in the alternative, if the Appeals Board does affirm the ALJ's finding that claimant's neck injury is compensable, then respondent argues it is responsible to pay only the medical expenses for the treatment of claimant's neck injury that have not already been paid by claimant's health insurance carrier or for the medical expenses paid out-of-pocket by claimant. Respondent contends it has no responsibility to reimburse the health insurance carrier for the medical expenses paid to treat claimant's neck injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the briefs and the parties' arguments, the Appeals Board finds the Award should be affirmed.

The Appeals Board finds the ALJ's findings and conclusions, as expressed in the Award, are accurate and supported by the record. It is not necessary to repeat those findings and conclusions in this Order. The Appeals Board hereby approves those findings and conclusions and adopts them as its own. Specifically, the Appeals Board concludes the record as a whole proves claimant's preexisting neck condition was aggravated and accelerated by the October 29, 1997, accident while claimant was working for the respondent.

Concerning the issue related to the payment of claimant's medical expenses, the Appeals Board approves the ALJ's order but wishes to clarify respondent's responsibility for those medical expenses. First, respondent is responsible for payment of all reasonable

and necessary medical expenses¹, subject to the medical fee schedule², that were required to treat claimant's October 29, 1997, work-related neck injury. Second, respondent is responsible to pay the medical expenses directly to the health care provider that furnished the medical treatment services. Third, respondent is responsible to reimburse claimant for any medical expenses claimant paid out-of-pocket and any medical mileage. Fourth, if the medical expenses were paid by another entity, such as a health insurance carrier, respondent is then responsible to reimburse that entity for payment of the medical expenses.

Here, claimant's health insurance carrier paid \$22,765.32 for the medical expenses required to treat claimant's work-related neck injury. This was the result of respondent denying claimant's workers compensation claim.

The claimant argues the respondent should be ordered to pay claimant directly the \$22,765.32 incurred in medical expenses for the treatment of claimant's neck injury. The claimant cites two Kansas Supreme Court cases as authority for this contention.³ But the Appeals Board finds both of these cases are distinguishable from the facts of this case. In both of the cited cases, the claimant was injured by a negligent third party while in the course of employment. The claimant, either through a settlement or a judgement, received damages from that third party. The claimant then paid the medical expenses for treatment of the injuries from the settlement or judgement. Respondent then, in the workers compensation case, was ordered to reimburse the claimant for the medical expenses because claimant had paid those expenses out of the damages claimant received from the negligent third party.

In this case, however, claimant did not personally pay the medical expenses. The medical expenses were paid by her health insurance carrier. Any claim for reimbursement is, therefore, the right of the health insurance carrier and not the claimant. The Appeals Board is unaware of any statutory authority in the Workers Compensation Act that provides that the injured worker is entitled to receive direct payment for medical expenses owed health care providers for the treatment of a compensable injury.⁴

¹ See K.S.A. 1997 Supp. 44-510(a) and K.S.A. 1997 Supp. 44-510(b).

² See K.S.A. 1997 Supp. 44-510(a)(1).

³ *Babcock v. Dose*, 178 Kan. 700, 290 P.2d 1046 (1955); *Clifford v. Eacrett*, 163 Kan. 471, 183 P.2d 861 (1947).

⁴ See *Hill v. USD 368*, WCAB Docket No. 217,763 (March 2000).

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Julie A. N. Samples' June 19, 2000, Award should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Philip R. Carson, Kansas City, KS
- Donald J. Fritschie, Overland Park, KS
- Julie A. N. Sample, Administrative Law Judge
- Philip S. Harness, Director